

# **Exhibit 11**

Nicolas Martin  
August 30, 2022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x  
HERMÈS INTERNATIONAL AND HERMÈS OF PARIS, INC.,

Plaintiff,

Index No.:  
22-CV-00384-JSR

-against-

MASON ROTHSCHILD,

Defendant.

- - - - -x

REALTIME DEPOSITION

OF

NICOLAS MARTIN

TAKEN ON: August 30th, 2022

- - - - -x

Nicolas Martin  
August 30, 2022

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VIDEO-RECORDED REALTIME DEPOSITION of NICOLAS  
MARTIN, held on August 30th, 2022, at 9:30 a.m.,  
at BakerHostetler LLP, 45 Rockefeller Plaza, 10th  
Floor, New York, New York 10020, was reported by  
AMBRIA IANAZZI, a Registered Professional  
Reporter, Certified Realtime Reporter, and  
Certified Shorthand Reporter.

\*\*\*\*\*



Nicolas Martin  
August 30, 2022

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DEBBIE O'TOOLE, Videographer

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- o o o -

N I C O L A S   M A R T I N ,

having been first duly sworn by a Notary  
Public of the State of New York was examined and  
testified herein:

- o o o -

1 N. MARTIN

2 in the world, including branded  
3 products?

4 MR. WARSHAVSKY: Objection to  
5 form.

6 THE WITNESS:

7 A. Could you repeat? I just  
8 want to make sure that I answer --

9 MR. MILLSAPS:

10 Q. Yes. Is it --

11 Does Hermès maintain that  
12 artists in the United States do not  
13 have a right to depict in their art  
14 that -- things that exist around them  
15 in the world, including branded  
16 products?

17 A. The question -- I say, no.

18 Q. Okay. And what -- in  
19 what --

20 Why do you say, no?

21 MR. WARSHAVSKY: You asked a  
22 "yes," or, "no," question.

23 (Simultaneous speaking.)

24 MR. MILLSAPS: Yes, I'm asking  
25 why is your answer "no" to that

Nicolas Martin  
August 30, 2022

1 N. MARTIN

2 question.

3 THE WITNESS:

4 A. I say no because the way  
5 you raise the question was like if  
6 Hermès was acting against all use of  
7 its IP rights, without checking the  
8 circumstances, and whether there is  
9 brand consumer confusion; brand  
10 erosion, harm to our goodwill.

11 MR. MILLSAPS:

12 Q. Okay.

13 I would like to go the next  
14 exhibit.

15 Well, first, have you heard  
16 of Tyler Shields?

17 A. I have heard so many names,  
18 so it might be.

19 Q. Okay.

20 But the name Tyler Shields  
21 doesn't ring a bell for you?

22 A. It might be.

23 Q. It might be?

24 A. Yeah.

25 Q. Does anything come to mind



Nicolas Martin  
August 30, 2022

1 N. MARTIN

2 when you think of the name Tyler  
3 Shields?

4 A. Not now, but maybe.  
5 Really, I've seen so many names.

6 Q. Okay.

7 MR. MILLSAPS: We'll mark this  
8 as Exhibit 11.

9 Yes, we'll mark this as  
10 Exhibit 11, please.

11 (Whereupon, Tyler Shields Black Birkin, Image  
12 was marked as Exhibit 11 for identification, as of  
13 August 30th, 2022.)

14 Q. Mr. Martin, I'm handling  
15 you what we've marked as Exhibit 11.  
16 You see here there's an image besides  
17 the text "Tyler Shields Black Birkin"?

18 A. Yes.

19 Q. Have you seen this before?

20 A. I don't remember having  
21 seen this.

22 Q. Okay.

23 And what does this image  
24 depict?

25 MR. WARSHAVSKY: Which image

Nicolas Martin  
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1 N. MARTIN

2 are you referring to?

3 MR. MILLSAPS:

4 Q. The -- The center --

5 The largest image there in  
6 the center, right besides the "Tyler  
7 Shields Black Birkin, 2021" with the  
8 price of \$5,000.

9 That image directly to the  
10 left of that text, what does that  
11 depict?

12 A. This one (indicating)?

13 Q. That's right.

14 A. You see a Birkin Bag. At  
15 the end, and the face of someone biting  
16 the Birkin Bag.

17 Q. And to you see a title for  
18 this image here?

19 A. This is a title -- Tyler  
20 Shields. Not -- Shields it's the name  
21 of the -- I don't see it.

22 Q. Well, reading the text  
23 there, do you take one of those to be  
24 the title of the piece?

25 A. Black Birkin, you think?



1 N. MARTIN

2 Q. Okay.

3 And who -- who is Tyler

4 Shields?

5 Does this refresh your  
6 recollection about who Tyler Shields  
7 is?

8 A. No.

9 Q. And would you infer from  
10 reading this that Tyler Shields is the  
11 one who created this image that's being  
12 sold here for \$5,000?

13 A. I guess it's her; I don't  
14 know.

15 Q. Okay.

16 Did Hermès give  
17 authorization for Tyler Shields to  
18 create this piece?

19 A. Not that I know.

20 Q. Did Hermès send Tyler  
21 Shields a Cease and Desist Letter about  
22 this piece?

23 A. Not that I know.

24 Q. What's the difference  
25 between this piece and MetaBirkins in

Nicolas Martin  
August 30, 2022

1 N. MARTIN

2 terms of Hermès's decision whether or  
3 not to send a Cease and Desist Letter?

4 MR. WARSHAVSKY: I'm going to  
5 object that I think we're beyond the  
6 scope.

7 But the witness can go ahead  
8 and answer.

9 THE WITNESS:

10 A. I can't tell just by seeing  
11 the picture. I think when it took --  
12 always to the -- all the circumstances.

13 MR. MILLSAPS:

14 Q. Well, I'll represent to you  
15 that what you're looking at is a PDF  
16 printout of a listing on the  
17 firstdibs.com website for this piece,  
18 which is listed for sale for \$5,000.

19 Do you consider this to be  
20 art?

21 A. I can't judge.

22 MR. WARSHAVSKY: Objection to  
23 form.

24 MR. MILLSAPS:

25 Q. You can't say whether this

Nicolas Martin  
August 30, 2022

1 N. MARTIN

2 is art?

3 Do you have any concerns  
4 here that viewers on this website might  
5 be confused as to whether or not this  
6 is associated with Hermès?

7 A. I don't know. I would need  
8 to see once again all the surrounding  
9 circumstances. Here you just showed a  
10 picture with a name of someone I don't  
11 know.

12 Q. Well, what I'm --

13 I just represented to you  
14 that this is --

15 This is currently on the  
16 Internet, on firstdibs.com website; are  
17 you familiar with Firstdibs?

18 A. No.

19 Q. Well, this is an image that  
20 is for sale for \$5,000 on the  
21 firstdibs.com website. And as you can  
22 see here, the image has a title of  
23 Black Birkin right next to it. So it's  
24 using the Birkin mark; is it not, here  
25 on this page?

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1 N. MARTIN

2 MR. WARSHAVSKY: Objection.

3 THE WITNESS:

4 A. What I'm trying to explain  
5 here is, is that it's not because there  
6 is a use of Birkin or the use of the  
7 trade dress Birkin, but there is a --  
8 necessarily an action from outside what  
9 used to be is the entire case, the  
10 consumer confusion, the brand erosion  
11 and to our goodwill.

12 MR. MILLSAPS:

13 Q. And looking at this, do you  
14 have any concerns about any of those  
15 things, based on this?

16 A. From my point of view,  
17 using surrounding circumstances is a  
18 very complex work, and I can't tell  
19 just by seeing the picture that it's  
20 a -- a piece of paper.

21 Q. Well, if I'm representing  
22 to you that this is being actively sold  
23 right now, you can go on line and you  
24 can buy this picture for \$5,000. And  
25 it's called Black Birkin, and it



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2 depicts what you describe what it  
3 depicts; do you have any concerns that  
4 shoppers on this website might think  
5 that this is associated with Hermès?

6 A. I don't know. I would like  
7 to see the -- the entire case.

8 Q. What else would you need to  
9 know to make that determination?

10 A. Is there a message? Who is  
11 she? And all of the different elements  
12 that we take into account. Is it a  
13 picture? Is it -- There are so many  
14 things.

15 Q. What do you mean by "is  
16 there a message"?

17 A. Whether she explained what  
18 is the picture about.

19 Q. When you say "she," are you  
20 referring to Tyler Shields here?

21 A. Yeah.

22 Q. Okay.

23 I -- I think it's a man,  
24 but -- So whether Tyler Shields has  
25 explained what the picture is about?

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1 N. MARTIN

2 MR. WARSHAVSKY: Objection to  
3 form, and I'm going to maintain my  
4 objection to the line of questioning.  
5 I think it's well outside the scope.

6 But the witness can answer.

7 THE WITNESS:

8 A. That could be one of many  
9 elements that we take into account.

10 MR. MILLSAPS:

11 Q. Okay.

12 What other elements would  
13 you take into account?

14 A. I'm sorry, but I can't tell  
15 everything. Each case is a  
16 case-by-case basis. If you look at  
17 everything, it consumer -- consumer  
18 confusion, whether there is a -- brand  
19 erosion, whether there's dilution -- I  
20 don't know, could we -- since we look  
21 at everything --

22 Q. Okay.

23 MR. WARSHAVSKY: I just --  
24 I'd also like to note that I think  
25 there's a mistake in the transcription.



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1 N. MARTIN

2 I think the Witness said "one of the  
3 many elements," not "one of the main  
4 elements," I think that's what you  
5 referred to.

6 THE WITNESS: I think I did.

7 MR. WARSHAVSKY: Okay. I'm  
8 just going to try to move this closer  
9 to you.

10 MR. MILLSAPS:

11 Q. So am I right that you  
12 testified that there was just a matter  
13 of a few days between when you became  
14 aware of Metabirkins and when Hermès  
15 sent a Cease and Desist Letter to  
16 Mr. Rothschild?

17 A. I don't know if it was a  
18 few days; but yes, I think I said 30th  
19 of November we discover. And I think  
20 we signed this letter on December 16th.

21 Q. Okay.

22 So a matter of a couple of  
23 weeks, give or take a couple of days.  
24 Do you -- What --

25 How did you determine that

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2 designers. There -- I believe there's  
3 more than one request, potentially; but  
4 I could identify those when I'm  
5 actually able to look at the requests.

6 MR. WARSHAVSKY: Okay.

7 That's fine.

8 THE WITNESS:

9 A. Could I just add something  
10 to my response, more in relation with  
11 this case? It's a question was whether  
12 we sought any Cease and Desist Letter  
13 to is Tyler Shields in relation to this  
14 case?

15 Q. Yes.

16 A. And the answer is not that  
17 I know.

18 Q. Okay.

19 Have you ever sent Tyler  
20 Shields a Cease and Desist Letter for  
21 any reason?

22 A. This I can tell because I  
23 don't know enough to -- to determine  
24 to -- in respect of what this brought  
25 Tyler shields did something different

Nicolas Martin  
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1 N. MARTIN

2 from this in which case we elected --

3 Q. Okay.

4 Have you heard of Becky  
5 Rosa?

6 A. I don't remember, perhaps.

7 Q. Okay.

8 MR. MILLSAPS: We'll mark this  
9 as Exhibit 13.

10 (Whereupon, BeckyRosa.com, Image was marked  
11 as Exhibit 13 for identification, as of  
12 August 30th, 2022.)

13 Q. Mr. Martin, I'm handing you  
14 what we've marked as Exhibit 13. And  
15 I'll represent to you that this is a  
16 printout there r from the website  
17 BeckyRosa.com.

18 Have you seen this before?

19 A. Not that I remember.

20 Q. Have you seen any of Becky  
21 Rosa's creations before that you can  
22 remember?

23 A. Not that I remember now.

24 Q. Do you know what we're  
25 looking at here on this page?

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1 N. MARTIN

2 A. If I look at the  
3 description, it says that is a -- and  
4 it seems like a Birkin Bag like --

5 TRANSLATOR: (Translating.)

6 A melting bag.

7 Q. And do you see a title for  
8 this piece?

9 A. I anticipate or I guess  
10 it's -- I guess it's Hermès Black is  
11 to us.

12 Q. And did Hermès give  
13 permission to Becky Rosa to use the  
14 Hermès trademark here?

15 A. Not that I know.

16 Q. Did Hermès give Becky Rosa  
17 permission to depict the Birkin Bag in  
18 this product?

19 A. Did we give permission?  
20 Not that I know.

21 Q. Okay.

22 Do you consider --

23 Well, do you see here that  
24 this piece is being listed for \$3800?

25 A. I guess --



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1 N. MARTIN

2 Q. Do you consider this to be  
3 art?

4 MR. WARSHAVSKY: Objection,  
5 same set of objections. It's beyond  
6 the scope of the deposition. It's  
7 irrelevant at this point and  
8 accumulative.

9 But you could go ahead and  
10 answer.

11 It calls for speculation.  
12 There's still no definition of art.

13 But go right ahead.

14 THE WITNESS:

15 A. I'm not an expert in art.

16 MR. MILLSAPS:

17 Q. Do you see any creative  
18 expression here in this piece?

19 MR. WARSHAVSKY: Same  
20 objections.

21 THE WITNESS:

22 A. Hard to say from the --  
23 what the --

24 TRANSLATOR: (Translating.)

25 A. The melting of the Birkin

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1 N. MARTIN

2 Bag is something a little bit.

3 Q. Do you --

4 Do you see any connection  
5 between the title of this piece and the  
6 piece itself?

7 MR. WARSHAVSKY: Same  
8 objection.

9 Go ahead and answer.

10 THE WITNESS:

11 A. There might with be one  
12 with purpose, but it's unclear to me.

13 MR. MILLSAPS:

14 Q. Do you recognize that  
15 Hermès mark is being used with an extra  
16 S added on the end of it here?

17 MR. WARSHAVSKY: "Hermès  
18 mark," you said?

19 MR. MILLSAPS: Hermès.

20 MR. WARSHAVSKY: Is that what  
21 you said?

22 THE WITNESS:

23 A. I see --

24 MR. WARSHAVSKY: Objection.

25 You can answer.



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1 N. MARTIN

2 MR. MILLSAPS:

3 Q. I'm sorry. Let -- Let's  
4 ask a different question.

5 Do you recognize that the  
6 Hermès name is being used here with an  
7 S added on to the -- the end of it?

8 A. I see the Hermès trademark  
9 here.

10 Q. Okay.

11 And so do you see then any  
12 logical connection between the use of  
13 the Hermès trademark in the title here  
14 and the product itself?

15 MR. WARSHAVSKY: Same  
16 objections.

17 You could go ahead and answer.

18 THE WITNESS:

19 A. I can see a link because  
20 it's black. And the bag in the -- that  
21 has been -- seems to be an -- an Hermès  
22 Birkin Bag.

23 Q. Okay.

24 Did Hermès send Becky Rosa  
25 a Cease and Desist Letter over this?

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1 N. MARTIN

2 A. Over this, not that I know  
3 of.

4 Q. Has Hermès ever sent Becky  
5 Rosa a Cease and Desist Letter?

6 A. I would be asking for -- I  
7 have been before. I can't tell.

8 Q. Okay.

9 We would call for  
10 production of any correspondence or  
11 Cease and Desist Letters between Hermès  
12 and Becky Rosa.

13 MR. WARSHAVSKY: Counsel, do  
14 you have any reason to believe that a  
15 Cease and Desist Letter went to any of  
16 these people, or are you just making it  
17 up?

18 MR. MILLSAPS: No, I'm just  
19 asking.

20 MR. WARSHAVSKY: You could  
21 imagine?

22 MR. MILLSAPS: Well, the  
23 witness doesn't know, and I don't know,  
24 so I'm saying if anything is there --

25 MR. WARSHAVSKY: Okay. I

Nicolas Martin  
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1 N. MARTIN

2 see.

3 MR. MILLSAPS: We had a  
4 discussion about how to search for  
5 these things, and so I'm identifying  
6 specific pieces that would be easy to  
7 search for.

8 MR. WARSHAVSKY: Okay.  
9 Noted. I mean, depending if anything  
10 exists we'll let you know.

11 MR. MILLSAPS: Okay. We'll go  
12 on to the next exhibit. This, I  
13 believe, will be Exhibit 14.

14 (Whereupon, C.J. Hendry, Image was marked as  
15 Exhibit 14 for identification, as of August 30th,  
16 2022.)

17 Q. Mr. Martin, are you  
18 familiar with the name C.J. Hendry?

19 A. I told you so many names.  
20 I'm not sure; I don't remember.

21 Q. So C.J. Hendry doesn't ring  
22 a bell for you?

23 A. Just now.

24 Q. Okay.

25 MR. WARSHAVSKY: I think you

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1 N. MARTIN

2 asked if it "rings a bell" a few times,  
3 can we just -- because it's an idiom  
4 could you --

5 MR. MILLSAPS: Sure.

6 THE WITNESS: "Ring a bell."

7 TRANSLATOR: (Translating.)

8 MR. WARSHAVSKY: Could  
9 refresh recollection.

10 THE WITNESS:

11 A. I don't know.

12 MR. MILLSAPS:

13 Q. Okay.

14 I'm handing you what we've  
15 marked as Exhibit 14.

16 And have you seen this  
17 before?

18 A. I think I have seen this  
19 before during the preparation of the --  
20 of the -- of the deposition.

21 Q. Okay.

22 So, you found these sorts  
23 of images to be relevant during the  
24 preparation for your deposition?

25 MR. WARSHAVSKY: Objection,



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1 N. MARTIN

2 mischaracterizes the witness's  
3 testimony.

4 MR. MILLSAPS:

5 Q. Why did you review this  
6 image in preparation for your  
7 deposition?

8 MR. WARSHAVSKY: I'm going to  
9 pause here and instruct the witness.

10 If you can answer without  
11 revealing any discussion with counsel  
12 to say that it's just about your  
13 discussions with counsel, then I'm  
14 going to instruct you not to answer.

15 THE WITNESS:

16 A. I prefer not to answer.

17 MR. WARSHAVSKY: No, you  
18 can't answer.

19 MR. MILLSAPS:

20 Q. Okay.

21 So I'm not going to ask you  
22 about your discussions with counsel,  
23 but I'm going to ask you: When you  
24 reviewed this, did you find it to be  
25 relevant to this case, yourself?

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1 N. MARTIN

2 A. To our case?

3 Q. Yes.

4 A. To the -- Hermès case? No.

5 Q. And why not?

6 A. Because for me, it is -- It

7 is --

8 It has no relation with the

9 MetaBirkin in the case we are.

10 Q. Do you have an  
11 understanding, apart from your  
12 discussions with counsel, about why you  
13 reviewed this to prepare for your  
14 deposition?

15 MR. MILLSAPS: I asked  
16 apart --

17 MR. WARSHAVSKY: Yeah, I  
18 understand, but I'm not sure the  
19 witness understands that. If I could  
20 just ask this.

21 EXAMINATION BY

22 MR. WARSHAVSKY:

23

24 Q. Did you see this, other  
25 than your discussions with us?



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1 N. MARTIN

2 A. No.

3 MR. WARSHAVSKY: Then I'm  
4 going ask not to -- instruct him not to  
5 answer that question.

6 EXAMINATION BY

7 MR. MILLSAPS:

8 BY MR. MILLSAPS:

9 Q. What does this image  
10 depict?

11 A. Sorry. What is unclear to  
12 me is whether the woman is part of the  
13 image.

14 Q. This is a photograph of a  
15 woman looking at the image that we are  
16 discussing.

17 A. Okay.

18 MR. WARSHAVSKY: So you're  
19 asking about the image, not including  
20 the woman?

21 MR. MILLSAPS:

22 Q. I'm asking about the image  
23 that the woman is looking at in this  
24 photograph.

25 A. I could see a bag which has

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1 N. MARTIN

2 the same shape of -- for the Birkin Bag

3 on the --

4 MR. WARSHAVSKY: Pedestal.

5 THE WITNESS:

6 A. Mid of piédestal with holes

7 in it, has a specific design.

8 MR. MILLSAPS:

9 Q. Does this bag share any  
10 other elements, aside from just the  
11 shape, with the Birkin Bag?

12 A. It shines.

13 TRANSLATOR: (Translating.)

14 It glitters.

15 Q. Did you see any other  
16 elements that it shares with a Birkin  
17 Bag?

18 I should say, other design  
19 elements that it shares with a Birkin  
20 Bag?

21 A. No.

22 Q. Do you know the title of  
23 this work?

24 A. No.

25 Q. Okay.

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2 Do you consider this to be  
3 art?

4 MR. WARSHAVSKY: Objection.

5 THE WITNESS:

6 A. As I say, I'm not an expert  
7 in art and I can't say.

8 MR. MILLSAPS:

9 Q. Do you consider this to be  
10 a creative expression?

11 MR. WARSHAVSKY: Objection.

12 THE WITNESS:

13 A. Here again, I can't tell  
14 just based on -- on this.

15 MR. MILLSAPS:

16 Q. You were able to answer  
17 that question when I asked you about  
18 the MetaBirkins images; were you not?

19 MR. WARSHAVSKY: Objection.  
20 Which question?

21 MR. MILLSAPS: Whether or not  
22 Mr. Martin sees any creative expression  
23 here, in this work.

24 THE WITNESS:

25 A. Perhaps because I know a

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2 little bit of the circumstances and the  
3 MetaBirkin case, not this one.

4 Q. No. I'm just asking you,  
5 based on the image that you see with  
6 your eye, do you see any creative  
7 expression in the image?

8 MR. WARSHAVSKY: Objection,  
9 asked and answered.

10 THE WITNESS:

11 A. And I say that, although  
12 it's, perhaps the fact that it's shiny  
13 and that is in this position, holding  
14 with the expressive expression.

15 Q. Okay.

16 Did Hermès give C.J. Hendry  
17 permission to create this piece?

18 A. This is the name of the --  
19 C.J. Hendry is the name of the creator  
20 of this?

21 Q. C.J. Hendry is the creator  
22 of the piece, yes. I'll represent that  
23 to you.

24 A. To my knowledge, no.

25 Q. Okay.



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1 N. MARTIN

2 A. We don't give her  
3 permission if that is your question.

4 Q. That's right. That was the  
5 question, yes.

6 Did Hermès send a Cease and  
7 Desist Letter in relation to this  
8 piece?

9 A. To my knowledge, no.

10 Q. One of this things you said  
11 a moment ago about the -- whether  
12 there's creative expression here was  
13 the positioning of the bag on the  
14 pedestal; is that one of the things you  
15 identified?

16 MR. WARSHAVSKY: Objection,  
17 mischaracterizes the testimony.

18 Go ahead and answer.

19 THE WITNESS:

20 A. I just said it could be one  
21 of the elements, makes it creative.

22 MR. MILLSAPS:

23 Q. How is that different from  
24 the positioning of the handbags  
25 depicted in the MetaBirkins images?

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1 N. MARTIN

2 A. If my memory's correct,  
3 it's MetaBirkin is front, which is the  
4 front.

5 Q. Okay.

6 Has Hermès ever sent a  
7 Cease and Desist Letter to C.J. Hendry  
8 for any reason?

9 A. To my knowledge, no.

10 Q. Okay.

11 A. But this, once again, I  
12 don't know the person, so. And so many  
13 names, but that I recall now, no.

14 Q. Okay.

15 MR. MILLSAPS: We would call  
16 for a production of any correspondence  
17 between Hermès and C.J. Hendry. We'll  
18 go to the next exhibit.

19 MR. WARSHAVSKY: Say the  
20 correspondence, you hear any Cease and  
21 Desist.

22 MR. MILLSAPS: Yes, well not  
23 just Cease and Desist. If there was  
24 any correspondence about collaboration,  
25 it's all in our document request.

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1 N. MARTIN

2 Q. Looking at this document  
3 and the image here and the title being  
4 used, do you have any concerns that  
5 consumers would be misled by this in  
6 the way that you articulated concerns  
7 around MetaBirkins?

8 MR. WARSHAVSKY: Objection to  
9 form.

10 THE WITNESS:

11 A. Like I said, I would like  
12 to see the surrounding circumstances,  
13 but if it's only a Birkin bag this way,  
14 could be problematic.

15 MR. MILLSAPS: And we would  
16 call for a production of any  
17 communications with Marco Brunori,  
18 whether Cease and Desist or, you know,  
19 communications about collaboration and  
20 same with Turbosquid.

21 Let's go to next exhibit --  
22 Actually let's take a break.  
23 (Request for production.)

24 THE VIDEOGRAPHER: We're off  
25 the record at 2:34.

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1 N. MARTIN

2 (Whereupon, a short recess was taken.)

3 THE VIDEOGRAPHER: We are now

4 on the record. The time is 2:44.

5 BY MR. MILLSAPS:

6 Q. Okay. Mr. Martin, did you

7 review any documents during that break?

8 A. No.

9 Q. Okay.

10 I'll turn to the next, in

11 what I think is the last exhibit and

12 have this marked as Exhibit 16.

13 Mr. Martin, I'm giving you

14 what we've marked as Exhibit 16.

15 Have you heard of Barbara

16 Ségal before.

17 (Whereupon, New York Post Article,

18 September 4, 2016 was marked as Exhibit 16 for

19 identification, as of August 30th, 2022.)

20 A. Same, not that I remember.

21 Q. Okay.

22 Have you read this article

23 before?

24 A. Not that I remember.

25 Q. Okay.



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1 N. MARTIN

2 I'll represent that this is  
3 a printout of a New York Post article  
4 from September 4th, 2016.

5 MR. WARSHAVSKY: Counsel, it  
6 looks like on both pages there's been  
7 some whiting out. Is that intentional?

8 MR. MILLSAPS: That is not  
9 intentional; it's just the way it  
10 printed as a PDF.

11 Q. Mr. Martin, have you seen  
12 the sculpture that's shown in the  
13 photograph on this first page before?

14 A. Not that I remember.

15 Q. Okay. Are you familiar --  
16 Are you aware that there're  
17 these stone sculptures of Birkin Bags  
18 out in the world created by Barbara  
19 Ségal?

20 MR. WARSHAVSKY: Objection to  
21 form.

22 THE WITNESS:

23 A. Not that I remember.

24 MR. MILLSAPS:

25 Q. Okay.

1 N. MARTIN

2 If you look at the second  
3 page, you'll find a photograph of  
4 Barbara Ségal working on one of her  
5 stone Birkins in her studio in Yonkers;  
6 do you see that?

7 There's a caption of the  
8 photograph there.

9 A. Yes.

10 Q. Would you consider this  
11 sculpture of a Birkin Bag to be art?

12 MR. WARSHAVSKY: Same  
13 objections. Is it okay if I just say  
14 same objections? You know what I'm  
15 saying.

16 MR. MILLSAPS: Sure.

17 THE WITNESS:

18 A. I'm not an expert in art,  
19 so I can't say.

20 MR. MILLSAPS:

21 Q. Do you see creative  
22 expression here in the sculptures?

23 MR. WARSHAVSKY: Same  
24 objections.

25 MR. MILLSAPS:

1 N. MARTIN

2 Q. Or I'm sorry. Let me  
3 actually ask that question differently.

4 Do you consider this  
5 sculpture to be creative expression?

6 MR. WARSHAVSKY: Same  
7 objection.

8 THE WITNESS:

9 A. I can tell you -- what --  
10 what I see, it seems to be a lot of  
11 works to make this because you see her  
12 working very hard. The only thing I  
13 see from the picture.

14 MR. MILLSAPS:

15 Q. Well, let's look back at  
16 the first page, which I recognize has a  
17 white bar across the photo, which is  
18 not part of the sculpture. It's  
19 obscuring just a small part of the  
20 sculpture.

21 But from the sculpture that  
22 you can see here, do you consider this  
23 sculpture to be creative expression?

24 MR. WARSHAVSKY: Same  
25 objections.

1 N. MARTIN

2 THE WITNESS:

3 A. I can't tell.

4 MR. MILLSAPS:

5 Q. How would you be able to  
6 tell?

7 A. If I could see the -- the  
8 piece itself and perhaps understand  
9 what is behind -- I don't this Barbara  
10 Ségal. I think I would need to have  
11 more -- more information to give a  
12 position.

13 MR. MILLSAPS:

14 Q. When you say you don't know  
15 Barbara Ségal, are you saying that the  
16 person who creates something determines  
17 whether that thing is creative  
18 expression or not?

19 MR. WARSHAVSKY: Objection to  
20 form.

21 THE WITNESS:

22 A. Not necessary. But it  
23 could be one of the surrounding  
24 circumstances that we could use.

25 Q. Did Hermès authorize



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1 N. MARTIN

2 Barbara Ségal to make sculptures of  
3 Birkin Handbags?

4 A. Not that I know of.

5 Q. Did Hermès ever send a  
6 Cease and Desist Letter to Barbara  
7 Ségal about her -- any of her  
8 sculptures of Birkin Handbags?

9 A. I don't know about this  
10 case, but I don't know.

11 Q. How about at any time, did  
12 Hermès send a Cease and Desist Letter  
13 to Barbara Ségal?

14 A. I don't know.

15 MR. MILLSAPS: Okay. We would  
16 again call for production of any Cease  
17 and Desist Letters to Barbara Ségal or  
18 any communications regarding potential  
19 collaboration with Barbara Ségal.

20 (Request for production.)

21 Q. Mr. Martin, do you know  
22 what an NFT auction platform is?

23 A. I'm not an IT expert, but I  
24 understand it's a platform where you  
25 can buy and sell NFT.

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1 N. MARTIN

2 Q. And did Hermès contact any  
3 NFT auction platforms regarding  
4 MetaBirkins?

5 A. If I remember correctly,  
6 yes.

7 Q. And which platforms did  
8 Hermès contact?

9 A. I think OpenSea and I know  
10 this, but I can't remember the exact  
11 name.

12 Q. Okay.  
13 And what did Hermès say to  
14 those platforms about MetaBirkins?

15 A. I don't remember in  
16 details, but if my memory's correct, to  
17 OpenSea, what we did is sending a copy  
18 of the Cease and Desist Letters that we  
19 sent to Mr. Mason Rothschild.

20 Q. Okay.  
21 And did Hermès say anything  
22 to those platforms about Mason  
23 Rothschild?

24 A. What do you mean by "say  
25 about"?

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1 Errata Sheet

2

3 NAME OF CASE: HERMÈS INTERNATIONAL AND HERMÈS OF PARIS -against- MASON ROTHSCHILD

4 DATE OF DEPOSITION: 08/30/2022

A chart of corrections  
is attached to this  
Errata Sheet.

5 NAME OF WITNESS: Nicolas Martin

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

11 From \_\_\_\_ to \_\_\_\_

12 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

13 From \_\_\_\_ to \_\_\_\_

14 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

15 From \_\_\_\_ to \_\_\_\_

16 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

17 From \_\_\_\_ to \_\_\_\_

18 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

19 From \_\_\_\_ to \_\_\_\_

20 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_


21 From \_\_\_\_ to \_\_\_\_

22 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

23 From \_\_\_\_ to \_\_\_\_

24

25 Dated: 10/12/2022

  
Nicolas Martin



Location	Current Language	Corrected Language	Reason
176:4-6	From the -- the there are the same, the main I -- I cannot like this.	Probably, but they are the same, the main, I can list like this.	Transcription error
176:21-177:2	digital file. And this digital file to there would present the Hermès Handbag. And I could add, because I for got when you ask what is important for the Birkin Bag is also what we call the crochet -- that we can see.	digital file. And this digital file today represent the Hermès handbag. And I can add, because I forgot when you ask what is important for the Birkin Bag is also what we call the clochette -- that you can see on the --	Transcription error
177:18-20	the smart contract, which is like the induction -- that's not contained the digital file.	the smart contract, which is locked in the blockchain, does not contain the digital file.	Transcription error
178:7-8	Could you repeat? I just want to make sure that I answer --	Could you repeat? Just to make sure I answer correctly.	Transcription error
181:19-21	This is a title -- Tyler Shields. Not -- Shields it's the name of the -- I don't see it.	This is a title (indicating), Tyler Shields? Ah no, Shields it's the name of the -- I don't see it.	Transcription error
183:11-12	the picture. I think when it took -- always to the -- all the circumstances.	the picture. I think we need to always to study all the circumstances.	Transcription error
183:21	I can't judge.	I can't tell.	Transcription error
184:2	is art?	is art? A: No.	Transcription error
184:7-11	I don't know. I would need to see once again all the surrounding circumstances. Here you just showed a picture with a name of someone I don't know.	I don't know. I would need to study once again all the surrounding circumstances. Here, you just show a picture with a name of someone I don't know.	Transcription error



Location	Current Language	Corrected Language	Reason
185:4-11	What I'm trying to explain here is, is that it's not because there is a use of Birkin or the use of the trade dress Birkin, but there is a -- necessarily an action from outside what used to be is the entire case, the consumer confusion, the brand erosion and to our goodwill.	What I tried to explain is that it's not because there is a use of Birkin or the use of the trade dress Birkin that there is necessarily an action from our side. What we study is the entire case, the consumer confusion, the brand erosion and the harm to our goodwill.	Transcription error
185:17-20	using surrounding circumstances is a very complex work, and I can't tell just by seeing the picture that it's a -- a piece of paper.	studying the surrounding circumstances is a very complex work and I can't tell just by seeing a picture on a piece of paper.	Transcription error
186:6-7	I don't know. I would like to see the -- the entire case.	I don't know, I would like to study the entire case.	Transcription error
186:11	she? And all of the different elements	she? A lot of different elements	Transcription error
187:14-21	I'm sorry, but I can't tell everything. Each case is a case-by-case basis. If you look at everything, it consumer -- consumer confusion, whether there is a -- brand erosion, whether there's dilution -- I don't know, could we -- since we look at everything --	I'm sorry, but I can't tell everything. Each case is on a case-by-case basis. You look at everything I said, consumer risk of confusion - -consumer confusion, whether there is a risk of brand erosion, whether there is a use that could harm our goodwill, that's things we -- we look at carefully.	Transcription error
188:20	we signed this letter on December 16th.	we sent the cease and desist letter on December 16 <sup>th</sup> .	Transcription error
189:16	what it was, the NFT.	what it was, the use of MetaBirkin.	Transcription error

Location	Current Language	Corrected Language	Reason
194:4	It looks like a Birkin.	You mean it's -- it's a Birkin handbag, it looks like a Birkin handbag.	Transcription error
197:3-4	If it was arised, not that I know.	Did we authorize? Not that I know.	Transcription error
198:9-14	Could I just add something to my response, more in relation with this case? It's a question was whether we sought any Cease and Desist Letter to is Tyler Shields in relation to this case?	Can I just add something? My response was in relation with this case. So if the question was whether we we sent any cease and desist letter to Tyler Shields in relation to this case?	Transcription error
198:22-199:2	This I can tell because I don't know enough to -- to determine to -- in respect of what this brought Tyler shields did something different from this in which case we elected --	This I can't tell because I don't know. You need to tell me to, in respect of what. Because perhaps Tyler Shields did something different from this, in which case we had reacted.	Transcription error
200:2-4	If I look at the description, it says that is a -- and it seems like a Birkin Bag like --	If I look at the description, it says "sculptural object that features as a functional vase" and it seems like a Birkin bag like --	Transcription error
200:9-11	I anticipate or I guess it's - - I guess it's Hermès Black is to us.	I anticipate or I guess it's -- I guess it's Hermès Black, with two "s".	Transcription error
200:25	I guess --	Uh, Yes.	Transcription error
201:15	I'm not an expert in art.	I'm not an expert in art and I can't tell.	Transcription error
201:22-23	Hard to say from the -- what the --	Hard to say, perhaps the -- what is the name?	Transcription error
202:11-12	There might with be one with purpose, but it's unclear to me.	There might be one with the double "s" but it's unclear to me.	Transcription error
204:6-7	I would be asking for -- I have been before. I can't tell.	I will be a careful as I have been before. I can't tell.	Transcription error
208:4	To the -- Hermès case? No.	The MetaBirkins case? No.	Transcription error
208:8-9	It has no relation with the MetaBirkin in the case we are.	It has no relation with the MetaBirkin and the case we have.	Transcription error



Location	Current Language	Corrected Language	Reason
209:2	No.	I don't think so.	Transcription error
209:25-210:3	I could see a bag which has the same shape of -- for the Birkin Bag on the -	I can see a bag which has the same shape of the Birkin bag on an estrade.	Transcription error
210:4	MR. OWARSHAVSKY: Pedestal.	Translator: Pedestal	Misidentification of speaker
210:6-7	Mid of pedestal with holes in it, has a specific design.	Made of béton with holes in it, it has a specific design.	Transcription error
211:25-212:3	Perhaps because I know a little bit of the circumstances and the MetaBirkin case, not this one.	Perhaps because I know a little bit better the circumstances and the MetaBirkin case, not this one.	Transcription error
212:11-14	And I say that, although it's, perhaps the fact that it's shiny and that is in this position, holding with the expressive expression.	As I said, I don't know, it's perhaps the fact that it shines, that it is in this positioning, the hole in the -- might be expressive expression.	Transcription error
213:2-3	We don't give her permission if that is your question.	We didn't give permission, if that was the question.	Transcription error
214:2-4	If my memory's correct, it's MetaBirkin is front, which is the front.	If my memory is correct, the MetaBirkin is front, you just see the front.	Transcription error
214:19-21	Say the correspondence, you hear any Cease and Desist.	You say the correspondence, you mean any cease and desist?	Transcription error
216:7-8	Can we have a break after this question?	Do you think we can have a pause after this question?	Transcription error
220:5-6	I see Hermès Birkin for -- by Marco Brunori.	I see Hermès Birkin Crocodile bag by Marco Brunori.	Transcription error
221:2-4	Same thing. I'm not an expert in art. I would like to -- that what it is complex here.	Same thing. I'm not an expert in art. I don't know. I would like to have a look better at what it is --it is complex here.	Transcription error

Location	Current Language	Corrected Language	Reason
226:9-13	I can tell you -- what -- what I see, it seems to be a lot of works to make this because you see her working very hard. The only thing I see from the picture.	I can't tell. What -- What I see is that it seems to be a lot of works to make this because you see her working very hard to -- that's the only thing I see from the picture.	Transcription error
228:9-10	I don't know about this case, but I don't know.	About this case, not that I know.	Transcription error
229:9-11	I think OpenSea and I know this, but I can't remember the exact name.	I think OpenSea and I know others but I can't remember the exact name.	Transcription error
230:17-20	I don't remember the exact wording we used, but I think we say that we consider there were 90 infringement in this situation.	I don't remember the exact wording we used, but I think we say that we consider there were IP infringement in this situation.	Transcription error
233:21-22	trademark delusion and unfair competition.	trademark dilution, unfair competition, cybersquatting.	Transcription error
235:16-18	Yes, I think it was -- When I was going to -- I think we were the same concern this morning.	Yes, I think it was -- what I was going to -- I think we had the same answers this morning.	Transcription error
235:20-24	And -- And my memory's correct, and said that we discussed with some people from other companies, like, I think I said, lawyer and we talked about UNIFAB.	And -- And if my memory's correct, I answered that we discussed with some people from other companies, like, I think I said, L'Oréal and we talked about UNIFAB also.	Transcription error